

Loan Note Guarantee Beverage Container Recycling Infrastructure Loan Guarantee Program



The Department of Conservation (Department) is authorized to create a ten million dollar **(\$10,000,000)** Beverage Container Recycling Infrastructure Loan Guarantee Account in the California Beverage Container Recycling Fund. Funds in this revolving account are continuously appropriated to issue capital expenditure loan guarantees for new recycling infrastructure located in the state.

1. Contact and Loan Information

Date of Note:	Principal Amount of Loan:		
Borrower Name:	Pre-Application/Loan Number:		
Lender Name:	Lender Tax ID Number:		
Lender Address:	City:	State:	Zip Code:

This Loan Note Guarantee is issued under the Lender's Agreement, Form DOR-LG-4, dated: _____,
for the loan project described in the Lender's Final Application Cover Form, DOR-LG-3, dated: _____.

The guaranteed portion of the loan is \$ _____ which is _____ percent of loan principal. The principal amount of loan is evidenced by the Loan Note Agreement between the Lender and Borrower, dated: _____.

In consideration of the making of the subject loan by the above named Lender, the State of California, acting through the Department of Conservation, Division of Recycling (Department), pursuant to Public Resources Code Section 14581(a)(11), and Public Resources Code Section 14582, does hereby agree that in accordance with and subject to the conditions herein, and found in the Lender's Agreement, Form DOR-LG-4, and referenced documents, which are hereby incorporated by reference as if set forth fully herein, it will pay the Lender, up to the guaranteed portion identified above. the lesser of :

1. Any loss sustained by the Lender on the guaranteed portion of the loan including:
 - (a) Principal and interest indebtedness as evidenced by said note(s) or assumption agreement(s), and
 - (b) Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with the Department's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or
 - (c) And, Capitalized interest on such portion resulting from the restructuring of a Guaranteed Loan and not exceeding the maximum loan guarantee limits, or
2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due thereon and any capitalized interest resulting from the restructuring of a Guaranteed Loan and not exceeding the maximum loan guarantee limit.

When Lender conducts the liquidation of the loan, accruing interest shall be covered by this Loan Note Guarantee to the date of final settlement only if the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by the Department.

2. Conditions of the Guarantee

1. **Loan Servicing:** Lender shall be responsible for servicing the entire loan, and Lender shall remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan.
2. **Priorities:** The entire loan shall be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan shall not be paid first nor given any preference or priority over the guaranteed portion.
3. **Full Faith and Credit:** The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the State of California and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it becomes such Lender or Holder or which Lender or any Holder participates or condones. If the note to which this is attached or relates provides for the payment of interest on interest, then this Loan Note Guarantee is void. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Department acquires knowledge of the foregoing. Any losses shall be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Department in the Conditional Commitment for Guarantee, Form DOR-LG-2. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.
4. **Rights and Liabilities:** The guarantee and right to require purchase shall be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by the Department of any rights it possesses against the Lender.
5. **Payments:** Lender shall receive all payments of principal, or interest, on account of the entire loan and shall promptly remit to any Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only the Lender's servicing fee.
6. **Protective Advances:** Protective advances made by Lender pursuant to the Lender's Agreement, Form DOR-LG-4, shall be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan that is held by another.
7. **Repurchase by Lender:** The Lender shall repurchase the unpaid guaranteed portion of the loan from a Holder within thirty (30) days of written demand by the Holder when the Borrower is in default not less than sixty (60) days on principal and interest due on the loan; or the Lender has failed to remit to the Holder its pro rata share of any payment made by the Borrower within thirty (30) days of the Lender's receipt thereof. The repurchase by the Lender shall be for an amount equal to the guaranteed portion of principal and interest accrued less the Lender's servicing fee. The Holder shall concurrently send a copy of the demand letter to the Department. The guarantee shall not cover the note interest to the Holder on the guaranteed loan accruing after ninety (90) days from the date of the demand letter to the Lender requesting the repurchase. The Lender shall accept an assignment without recourse from the Holder after repurchase.
8. **Repurchase by Lender for Servicing:** The Lender is encouraged to repurchase the loan to facilitate the accounting of funds, prevent default, and resolve the problem, where and when reasonable. If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder shall sell the guaranteed portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion less the Lender's servicing fee. The guarantee shall not cover the note interest to the Holder on the guaranteed loan accruing after ninety (90) days from the date of the demand letter of the Lender or the Department, to the Holder, requesting the Holder to tender its guaranteed portion. The Lender shall not repurchase from the Holder for arbitrage or other purposes to further its own financial gain.
9. **Custody of Unguaranteed Portion:** The Lender shall retain the unguaranteed portion of the loan.

10. **When Guarantee Terminates:** This Loan Note Guarantee shall terminate automatically upon: (a) full payment of the guaranteed loan; or (b) full payment of any loss obligation hereunder; or (c) written notice from the Lender to the Department that the guarantee will terminate thirty (30) days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to be cancelled by the Department.
11. **Settlement:** The amount due under this instrument shall be determined and paid as provided in the Lender's Agreement, Form DOR-LG-4, Section VII.
12. **Notices:** All notices shall be initiated through the Department:

California Department of Conservation
Division of Recycling, Market Research Branch
801 K Street, 17th Floor
Sacramento, California 95814

Attn: Beverage Container Recycling Infrastructure Loan Guarantee Program

Telephone: (916) 323-5878
TDD (916) 324-2555

3. Department Approval Signature

California Department of Conservation

By: _____ (Signature)

_____ (Name typed or printed)

Title: _____

Date: _____